A RESUMÉ

OF THE

Arguments Against State Insurance

WORKME[illegible] REAU

Argum[illegible]ance

WORKMEN'S COMPENSATION PUBLICITY BUREAU

NEW YORK, 1913

A RESUMÉ OF THE ARGUMENTS AGAINST STATE INSURANCE ON WORKMEN'S COMPENSATION.

The common arguments in favor of and motives for the advocacy of state-managed insurance of workmen's compensation for occupational injuries—some of which are avowed and others not—are as follows:

(1) That it most surely guarantees the payment of their compensation to injured workmen.

(2) That it provides insurance more economically than any other method.

(3) That, being conducted without pecuniary self-interest, it will be administered most sympathetically and liberally toward the injured.

(4) That it can be maintained by "taxation" and thereby escape the constitutional objections to the imposition of a direct liability for compensation, "regardless of fault."

(5) That it is especially suited to a system of compensation whereunder the workmen contribute to the insurance.

(6) That the drift of European opinion is toward state insurance.

(7) Because, by accident or design, it operates to shift a considerable part of the cost of compensation from employers onto the public.

(8) Because, where compulsory, it permits of the adoption of the "current cost" (deferred assessment) method of insurance.

(9) Because it gives the state the control of the reserve funds, so that they may be used to establish a favorable market for state or municipal securities.

(10) Because it is looked to by proprietors of carelessly conducted concerns to relieve them of part of the burden of compensating for their accidents by transferring it onto their more efficient competitors.

(11) Because it may be politically manipulated so as to favor particular classes of persons or industries,—to throw a part of the accident cost of this generation over upon the succeeding generation, to subsidize the more hazardous industries at the expense of the safer industries, to favor unionized trades at the expense of the non-unionized or vice versa, etc.

(12) Because it furnishes considerable political patronage, and is useful to build up a political machine.

The last three motives are self-condemned. The other items will now be considered *seriatim.*

First. State insurance most surely guarantees payment to the injured workmen only where it is pure state insurance—that is, where the state assumes a liability to pay the compensation. But, even under such conditions, it is possible that the state may not appropriate to carry out its pledges, and very probable that in case of deficiency it may delay the appropriations requisite for that purpose. So, even under pure state insurance, the payment of the compensation may be neither prompt nor certain.

Where insurance is merely state-managed, as in Ohio and Washington, the state guarantees nothing and the fund alone is liable. If then a deficiency occur, where is the money to come from to pay the continuing pensions upon previous awards? Either the employers are liable to further assessments to make good the deficiency or they are not. In the latter alternative the workmen are without security for their awards, but are dependent for relief upon the contingency of charitable appropriations by the state. In the former alternative employers do not receive indemnity in return for their premiums, but remain subject to a contingent liability for deficiencies. And with the extreme probability of heavy deficiencies under state-managed insurance—a probability startingly confirmed in the very first year's experience under the Washington law—this liability is extremely dangerous.

It should be noted also that this plan does not secure *all* the injured workmen, unless the state either assumes itself or imposes upon the fund the liability to pay compensation to workmen regardless of whether or not their employers have paid their premiums.

From a practical standpoint the subject of security is receiving more attention in this country than it deserves. Experience in England, where insurance is voluntary, is fairly convincing that workmen seldom if ever lose their compensation through the default of the employer to insure.* (See testimony of Mr. Gill, M. P., before the New York Employers' Liability Commission, "Minutes of Evidence, 1910," p. 81). It is significant that in his severe arraignment of the English law, in his brief filed with the Congressional Commission on Employers' Liability (1911), Mr. Miles M. Dawson did not criticise it on the ground of lack of security. Practically, it has been much more needful to require of employers security for their contingent liabilities for damages under our old negligence laws than it is to require security for

*It is believed that experience in Russia, Spain and Sweden is similar.

contingent liabilities for compensation under a direct liability compensation law; and yet we have never thought of so doing. Why then, merely because one liability is substituted for another, should the addition of a requirement for security be deemed essential? It is true that under the compensation laws there is a peculiar need of security for awards of long continuing pension payments; but such security for *accrued* liabilities may be required without generally requiring security in advance of liability. Special provisions for security for *accrued* liabilities are to be found in the laws of Belgium, Finland, Sweden, Russia and The Netherlands. And special provisions for compulsory insurance relating to occupations peculiarly subject to the disaster hazard, such as those of miners and seamen, are to be found in the laws of Russia, Finland, Denmark, Belgium and France.

But, in order to prevent the continuance of certain abuses under our negligence laws, it is undoubtedly desirable to require by law that insurance of compensation shall run directly for the benefit of injured workmen, instead of, as heretofore, to indemnify only the employer as against his workmen; and that every policy of insurance shall cover the employer's entire liability for compensation accruing during the period covered by the policy.

If nevertheless it be deemed desirable to make insurance—or assurance—generally compulsory, employers can be given an option between various methods of assurance of their selection, without reducing the security to the workmen below that furnished by monopolistic state-managed insurance. Such options are allowed in France, Belgium, Italy, Finland and The Netherlands, in which countries insurance or security is obligatory, and in three of which countries (France, Belgium and The Netherlands) the state guarantees the compensation, wholly or in part.

Second. It cannot be claimed with any truth that state or state-managed insurance is cheaper than private insurance, unless it has a monopoly. For experience shows that state service is almost always more expensive than private service. In competition with private insurance state insurance is maintained in The Netherlands, Italy and Sweden only by excessive subsidies or legal privileges, or both;* and in New Zealand, where it competes on *equal* terms

---

*In estimating the cost of the state insurance in these countries the cost to the public must be reckoned. It includes three items:

(1) The subsidies from public moneys.

(2) The extra cost on other branches of public service entailed by the insurance.

(3) The loss of the taxes received from private insurance.

with private insurance, it has but a small proportion of the business and is slowly but steadily losing ground.

If state insurance is given a monopoly, as in Norway, it eliminates the expenses of competition and effects some further saving in administration by the free use of pre-existing governmental machinery. But even with this advantage it has not demonstrated its relative cheapness in comparison with private insurance. Mutual and self-carried insurance are decidedly cheaper than the Norwegian insurance. And although the expenses of administration in Norway are paid by the state and in England must be paid for by employers in their premiums, nevertheless the cost to employers of the insurance in private companies in England is on the average about as low as that of state insurance in Norway, and for the better concerns is lower — for in Norway the better concerns have to pay the same flat rates as their more careless competitors, which rates, being the average rates, are higher than the minimum rates which the better concerns in England secure. Early tables of rates of the Norwegian state insurance office show exceptionally low rates for some industries; but those rates have been found to be far below cost, and consequently have been or are being raised.*

It is true that the expenses of administration are kept exceptionally low in Norway — they are reported to be 11% of premiums — as against an average of about 36% of premimus among private companies in Great Britain. But expenses of administration are only one item in cost; and the economic criterion is not the cost of administration but the total cost of the insurance in relation to its coverage, its benefits and the efficiency of its service.

There are a number of reasons why the cost of *administration* of the insurance in Norway ought to be relatively low:

In the first place, in Norway there is not a cent included in the expenses of administration for inspection to differentiate rates and to prevent accidents. This is a fatal omission. It renders the Norwegian insurance cheap in the derogatory sense in which "cheap" means "bad."

Moreover the *quantum* of administrative service under the Norwegian insurance is much less than under the British law. Under the Norwegian law only those injuries that last over four weeks have to be compensated for, while in Great Britain all injuries which last over one week have to be compensated for.

---

*A comparison between the rates in the two countries is not an exact test of relative economy in insurance service, for the reason that the benefits under the compensation laws and the coverage of the insurance in the two countries differ. But a comparison which ignores these differences, is unfair to the British insurance, and not to the Norwegian.

But injuries lasting over one week constitute more than twice as high a percentage of injuries as those lasting over four weeks; so the English insurance covers more than twice as great a proportion of injuries. Moreover short time injuries entail a much higher cost of administration relatively to the total cost of compensating therefor than do long time injuries. Consequently the expense of administration of a law like the English is inevitably very much higher in proportion to the total cost of the insurance than the corresponding expense under the Norwegian law. If the British law were amended to apply only to injuries lasting over four weeks, the cost of administration of the English companies would probably be reduced thereby from 36% to about 18%. All of which means that the higher percentage of expenses of management in Great Britain is due principally to the greater coverage of the insurance and not to lack of economy in administration.

Moreover, 11% of premiums is *not* the complete total of the cost of administrating the insurance in Norway; for no allowance is made in that total for the additional expense imposed on other departments of the government in carrying out their share in the administration of the insurance. Undoubtedly there is some economy in this use of pre-existing governmental machinery; but it results in shifting upon other branches of government a large portion of the cost of managing the insurance, and thereby in concealing it. Moreover reliance upon ordinary local political machinery for the scrutiny and adjustment of claims, etc., gives rise to abuses which waste the funds and increase the cost, and yet arithmetically decrease the ratio of expense. Consequently reduced expense of management may mean increased cost from mismanagement, which latter item of cost is hidden in the claims account. To disregard that item of loss and to limit attention to some saving in the expense account is vitally misleading.

Experience under the Washington and Ohio laws demonstrates nothing. Abroad the experience of the first years under a compensation law has always been found to be misleading as to cost. Workmen do not learn to put in their claims, abuses do not develop and the cost of surveillance, of continuing scrutiny of claims, etc., does not begin to be realized for two or three years. Moreover, in neither of these States has there yet been published a detailed report, in the form and particulars required of insurance companies,* from which the cost of their systems can be accurately calculated and checked up. As to expenses

*The report of the Washington Commission for the first year is not in such form. For the inadequacy of that report see: "Workmen's Compensation System—State of Washington", (pamphlet) by J. V. Patterson, President, Seattle Construction & Dry Dock Co., Seattle, Washington.

of administration:—In Ohio they have been abnormally high, while in Washington they are reported as abnormally low. But the Washington report for the first twelve months shows that nothing has been spent for medical service or a force to inspect plants, to scrutinize claims, etc., and consequently that the complete machinery requisite for proper administration has not yet been established. The cost of such partial and defective administration for the first year is no criterion.

To summarize:—In actual practice state insurance has never demonstrated its relative cheapness for a complete and efficient service.

Third. That state-managed insurance will be administered with greater sympathy for and liberality toward injured workmen than other forms of insurance is only partially true. It would be more correct to say that such insurance will be administered with the least regard to the terms of the law. But the principal beneficiaries of perversions of the law will be malingerers and impostors, and those having political "pull." Experience shows that the principal commendable aim of the administrators of state insurance is cheapness of administration, which leads to a less careful scrutiny of claims and surveillance over pensioners, with the result that the claims account is unduly mulcted by impositions and malingering. More reprehensible is the tendency on the part of political administrators to use the funds for the distribution of political favors or of public charity at the private expense of the employers, who are thereby taxed beyond what the law contemplates. On the other hand, political administration may, and at times will, operate to the prejudice of the injured workmen. For where, for example, through mistake or a desire to curry favor with the employer-class, rates have been fixed too low and a deficiency is impending, there will be a disposition on the part of the administrators of the fund to scale down awards so as to make ends meet and hide the mistake in rates, regardless of the exact legal rights of the injured claimants.* The function of determining awards and the function of levying assessments to raise funds to meet the awards should not be confided to the same officials. Otherwise the opportunities are too great to juggle either with the awards or with the

---

*So far as can be ascertained from its first report, the Washington Commission has betrayed an initial policy of currying favor with employers by making unduly low awards. But to be just, part of the blame should be placed upon the law, which under some circumstances provides for ridiculously inadequate benefits. For example, if the construction placed upon it by the Washington Commission in the case of the Chehalis disaster be correct, the compensation for a widow, wholly dependent upon a fatally injured minor son or daughter 20 years and 11 months old, would be just $20.00 and no more.

rates, regardless of the terms of the law. Sometimes the opportunity will be used to stretch the law in favor of claimants; and sometimes to scale down awards in favor of low rates for employers. This is a two-edged sword which cuts both ways. And the argument in favor of this system implies a design that it shall be used one way or the other in violation of the terms of the law.

It should be noted that state insurance tends to break the direct relation between the individual employer and his injured workmen; for when the employer has been heavily taxed by the state to insure his workmen, his disposition will be to leave them when injured to the state to take care of. But where the liability is direct, it remains a private matter and many employers will be liberal beyond the terms of the law in compensating their injured workmen—for the law does not limit the relief that an employer may furnish, but simply prescribes a minimum. Under the direct liability many large employers will carry their own insurance or maintain joint benefit schemes, and will compensate their better workmen liberally. Even where insurance is carried in stock companies employers will be inclined to insist on fair compensation being paid to their injured workmen as a condition to continuing their insurance. And English experience indicates that insurance in private companies in practice will result generally in employers dealing directly with their injured employees in adjusting compensation—the insurance companies simply indemnifying and reimbursing the employers. The objection to liberality being dispensed by state officials is that it will probably be dispensed carelessly and without discrimination, and that the beneficiaries of the official liberality will be impostors and malingerers or political favorites rather than deserving workmen.*

One important reason for the demand for this practice by some of the working-people is, that under the direct liability the employer or his insurer may coerce or induce an injured employee to settle on less favorable terms than the law contemplates. But that abuse can be prevented by requiring all settlements to be approved by some disinterested board or authority, and by making all such settlements voidable until so approved.

Fourth. The proposition that state insurance maintained by taxation avoids a constitutional objection to the imposition of a direct liability for compensation (i. e., the constitutional objection to a "compulsory compensation

---

*This proposition is supported by experience in Italy, where the tremendous increase in the ratio of reported occupational injuries under the administration of the Italian National Accident Insurance Association is generally ascribed to malingering. (See Report of Massachusetts Commission on Compensation for Industrial Accidents, 1912, pp. 124-5.)

law) was urged before the Congressional Employers' Liability and Workmen's Compensation Commission, of which Senator Sutherland was chairman, and was unanimously decided adversely. (See the Report of that Commission for the arguments of Mr. Miles M. Dawson in support of that proposition, of Mr. P. Tecumseh Sherman in reply, and of Messrs. Alfred P. Thom, Ernst Freund and James A. Lowell in support of the constitutionality and justice of the direct liability.)*

The fact that a direct liability compensation law has been declared unconstitutional in New York in the case of Ives vs. South Buffalo Railway Company (201 N. Y. 271), while a state-managed insurance law has been held constitutional in Washington in the case of Davis-Smith Company vs. State Auditor (117 Pac. Rep. 1101), is occasionally cited as an argument in favor of the proposition in question. But that argument loses all its force from the fact that the Washington court based its decision upon grounds that would equally sustain a direct liability compensation law, and expressly recognized that its decision was in direct conflict with that of the New York court.

It should be noted that compensation is not public *charitable* relief, and therefore should not be provided for by taxation on that ground. It is a definite private right accruing to workmen by reason of injuries for which particular employments are responsible, and consequently for which particular employers are made liable. Where employers are taxed to maintain a fund to pay the compensation, they are taxed to pay their private liabilities; and thereby an indirect liability is substituted for a direct liability, and collectivism is substituted for individualism. That would be more opposed to instead of being more in accord with our established principles and precedents than a direct liability.

Fifth. It must be admitted that where workmen contribute to the insurance of compensation the method of insurance should not be left to the choice of the employer, but that the insurance fund should be administered by the state or by some joint body representing employers and employees or employers, employees and the state. But of these several methods of administering a fund raised by joint contributions, it is the prevailing opinion that the Austrian form of joint administration is preferable to pure state administration.

---

*For further arguments in support of the constitutionality of a direct liability compensation law see "Employers' Liability and Workmen's Compensation Laws," an address delivered before the Maryland State Bar Association July, 1912, by J. Walter Lord, of the Baltimore Bar; and "Workmen's Compensation Acts," an address delivered before the Massachusetts Bar Association, December 28th, 1911, by P. Tecumseh Sherman, of the New York Bar.

But it is far from worth while to resort to any special system of insurance merely in order to suit the system to workmen's contributions. For contributions by employees are not desirable. Austria is the only one of the great industrial countries where such contributions are required under an industrial accident compensation law. Experience there indicates that there is no advantage to be derived from such contributions; and consequently the later law of Hungary has dropped that feature. In Austria the workmen's contributions amount to 10% of the premiums. The collection of such a small percentage from the payrolls causes much extra bookkeeping and inconvenience; and the idea that such contributions tend to check malingering is now almost altogether abandoned. In return for their contributions the workmen's compensation must be proportionately increased; and it is the general opinion that where the scale of compensation is increased materially beyond 50% of the wage loss—particularly for short time injuries—it offers too great an incentive to malinger, exaggerate and impose, and that it is less conducive to accident prevention than where the scale is 50%; (which 50% is generally recognized to be the employer's proper share of the average wage loss from injuries).

In some countries workmen contribute *indirectly* toward insuring compensation for injuries during the first few weeks after injury, through the *sickness* insurance. Because the sickness insurance is maintained principally at employees' expense, perhaps it has some effect in the way of checking malingering during those weeks. But sickness insurance, according to the prevailing opinion, is best managed by mutual associations; so that the movement in favor of sickness insurance by no means leads toward state-managed insurance.

There is therefore no reason why resort should be had to state-managed insurance in order to fit the insurance system to workmen's contributions.

Sixth. The argument that European opinion now points toward monopolistic state-managed insurance as the ultimate solution of the problem of the best method of securing workmen's compensation ignores far more than it takes into account. The Norwegian state insurance law was one of the earliest of the compensation laws; yet it has never been followed nor treated as a model to copy by any other country. After Norway had adopted its law, Great Britain, Denmark, France, Italy, Spain and Greece, in the order named, adopted compensation laws for occupational injuries; and none of them followed the Norwegian law. Then, in 1901, The Netherlands adopted a sort of state insurance law, but with vital modifications permitting employers to insure privately or to carry their own risks. And none of the later compensation laws (excepting those of Ohio and Washington) have followed the Norwegian law until the

recent law of Switzerland—which remotely resembles it, but which is a broad scheme of social insurance covering sickness and all accidents (occupational or otherwise). The prevailing types of compensation law adopted since the enactment of the Norwegian law have been either direct liability laws—with or without compulsory insurance—or collective liability laws, modeled more or less after the German law. And certainly the prevailing European expert opinion is that the choice lies between these two types.

It is true that in France, Sweden, The Netherlands and New Zealand there is state insurance, and in Italy something closely resembling it—but *without monopoly*,—and that in Italy and Sweden there appears to be a disposition to give the state insurance what practically amounts to a monopoly by means of overwhelming favors in the form of public subsidies or legal privileges. But this local disposition in Sweden and Italy is supported by no general expert opinion. And so far as appears the single motive force behind all existing demands for state insurance is socialism. Employers generally—and the better classes of employers almost universally—are opposed.

Seventh. State insurance in Norway at one time resulted in a large deficiency, which was made good by an appropriation from the public funds. And the cost of administrating the state insurance in Norway, Sweden and The Netherlands is in whole or in part paid out of the public funds. This shifting of a part of the cost of the state insurance system upon the general public relieves employers of part of the cost that would fall altogether upon them under a direct liability law; and consequently it makes state insurance appear attractive to them. But the relief therefrom is very slight; and generally the more careless employers are the principal beneficiaries. Certainly the careful employers, with well equipped and well conducted establishments, are relatively more heavily taxed in the countries named, in spite of the shifting of a part of the cost onto the public, than under a fair direct liability law, like that of Great Britain. It may be expedient for the state to contribute the free services of its governmental agencies to assist in administering the insurance, as is done in Germany; but it should not appropriate to relieve industrial employers from any part of the cost of their private obligations. Once start the practice of public grants for private relief, for the benefit of industrial employers, and there will be no limit to the extent to which it may be logically carried; and industrial employers, as taxpayers, would be among the principal sufferers from its abuse.

There is yet another argument sometimes advanced for state contributions, namely, that compensation for work injuries is a *public* duty and therefore that the cost thereof should be borne by society and distributed between employers,

the work-people and the public. This theory, however, is not prevalent. In New South Wales alone of foreign countries does the state contribute towards the cost of the compensation. It is the prevailing theory that the industry and those who profit from it should bear the pecuniary loss from work injuries, that the liability for the compensation is *private*, and that society owes to injured workmen nothing more than an effective remedy to secure their compensation. It is only where the law goes further and imposes upon employers an additional obligation to insure, that in some countries the state contributes part of the cost of the *insurance*. But even this practice is discountenanced by the prevailing authorities.

Eighth. The "current cost" or "deferred assessment" practice of levying insurance premiums is advocated by some because it would avoid the shock of the sudden and heavy increase in insurance rates necessarily incident to a change from the negligence liability to the more expensive compensation liability, by making such increase more gradual. But that practice is financially dangerous and entails many evils. Of all foreign countries Germany alone permits it. And the other compensation law countries, which have required *full reserves* for insurance, have nevertheless passed through the change from the negligence law to the compensation law without material embarrassment to industry; and in consequence they now enjoy the advantage of comparatively* solvent insurance. Therefore state insurance should not be resorted to in order to permit this method of levying insurance premiums.

For the objections to this practice from a strictly actuarial standpoint see "Memorandum submitted to The Hon. Sir William Ralph Meredith," Ontario, December 7th, 1912, by S. H. Wolfe, of New York.

The general objections to it, in the light of German experience, may be epitomized as follows:

(a) While it starts off with pleasingly low rates, it must eventually result in unduly high rates. The universal satisfaction at first felt with the German law was consequently ephemeral. That condition is passing. There are now loud complaints from employers, and their dissatisfaction will increase, as rates continue to rise, as they must for many years to come. The rates in Germany today average nearly treble what they were in the beginning. It is calculated that they will not reach their stable maximum until some 20 years more. How much higher they will then be no one knows, but the majority guess is that they will again double.

---

*In some countries the maintenance of full reserves has not been strictly enforced.

(b) This practice conceals the cost of insurance. No one knows what is the true cost of, as distinguished from the current price charged for, insuring compensation in any given trade in Germany today.

(c) This practice once embarked upon, the law cannot be changed without serious embarrassments; for there are heavy liabilities to be liquidated. The figures for the industrial associations alone are not available; but the outstanding capitalized liabilities of all the German accident associations in 1910 were estimated at 1,142,000,000 marks ($271,900,000), their reserves at 318,900,000 marks ($75,930,000), and their deficiencies at 823,100,000 marks ($195,970,000). The English law, per contra, could be radically changed tomorrow, if deemed desirable, without disturbing existing insurance.

(d) This practice handicaps new establishments by compelling them to assume the liability for and to pay a material proportion of the losses of their pre-established competitors. And it imposes upon successful establishments the burden of liability for pensions for injuries incurred in establishments of defunct or insolvent competitors. This may have been the cause of the abnormally high rates in some associations; e. g. tanneries. It is obvious that if a material proportion of the establishments in any trade should shut down the financial liability thereby dumped upon the survivors would be ruinous. In this respect the dangers and defects of the German "industrial accident insurance" are analogous to those of mutual assessment life insurance—with which we in America are familiar.

(e) Finally this practice is subject to the danger that the accumulated liabilities of the associations, which are in effect mortgages on the various branches of industry, may become so burdensome in a period of depression and contraction as to crush the industries of the country affected in competition with the industries of other countries not similarly burdened. To meet the increasing cost of a heavy overhead charge for past indebtedness in a period of continued prosperity, rising prices and expanding industry, such as Germany has enjoyed for many years, is comparatively easy. But to liquidate such an indebtedness, carried over from the past, under opposite conditions, is an entirely different matter.

Ninth. Insurance, unless conducted on the deferred assessment basis, requires the accumulation of heavy reserves to cover outstanding liabilities; and where state officials manage the insurance they control the investment of the reserves. Consequently some public officials, with the difficulties in the way of placing the bonds of their municipalities, etc., in mind, see in state-managed

insurance a means of creating and controlling a ready market for such securities. At first blush the idea of using such reserves for such other public purposes seems commendable; but upon consideration everyone ought to realize that it means danger of expensive insurance and of unsound insurance. In order that insurance may be cheap and sound, the reserves must be invested in securities which yield good income and are readily convertible, and therefore must be invested primarily with a view to the requirements and benefit of the fund investing and not primarily for the benefit of the borrower. This argument, advanced for state-managed insurance, is really a strong argument against it—at least to those who are to pay for the insurance.

Having now reviewed the arguments for state insurance, let us take up the objections to it.

State insurance or state-managed insurance may be monopolistic or competitive. It may have behind it the credit of the state or may be without guarantee. And it may be sold for level premiums and secured by one general fund, or, as in Washington, it may be conducted on the assessment basis to maintain a lot of small trade funds. According to the exact form it assumes the dangers of and objections to it vary. But the more general objections,* briefly stated, are as follows:

(1) A general objection to state-managed insurance is that it never results in a proper differentiation of insurance rates in proportion to hazards. Inability properly to differentiate rates, through comparative inefficiency, has been demonstrated where state-insurance offices are in competition with private insurers. In Norway, where the state has a monopoly of compensation insurance, not only are the rates "flat" for each trade class, but the officials have refused even to attempt to discriminate between particular establishments, on the ground that to do so would subject them to accusations of and to appeals for favoritism. Moreover, all the state insurance offices are bent on cheapness of administration, and to effect a saving in the expense account have dispensed with the inspection force requisite to differentiate rates properly. This objection is of vital importance. Lack of proper discrimination in rates is not only most unjust to the more careful employers by making them pay for a part of the losses of

---

*The general objections to state-managed insurance are best summarized in the Report of the Congressional Employers' Liability and Workmen's Compensation Commission, pp. 56-8. See also Report of the Industrial Accidents Commission of Pennsylvania, p. 2, and Report of the Connecticut State Commission on Compensation for Industrial Accidents, pp. 4-7.

their careless competitors, but it also thwarts a principal purpose of the compensation law. That law is designed not merely to furnish just relief to the victims of industrial accidents, but also to reduce accidents. But in order to be effective for that latter purpose either each employer must pay the full compensation for injuries incurred in his business or the rates for insurance must be fairly differentiated according to the relative degree of hazard in each establishment. Where, on the contrary, rates are "flat" in each trade or industry, the effect is just the opposite. (See "Notes and Opinions on Certain Aspects of Insurance under the Foreign Compensation Laws," by P. Tecumseh Sherman, p. 28 *et seq.*) It is for this reason that industrial experts almost universally condemn the Norwegian State Insurance Law.

It is argued that the failure of the state insurance offices to differentiate rates is simply accidental, and that a state bureau might do so as well as a private company or mutual association. The answer to this contention is that a state insurance office cannot do so without sacrificing its claims to cheapness. Public service is more expensive than private service; and if the state furnishes a service *equivalent* to that of private companies or mutual associations it will cost more. Moreover state inspection is never so expert or responsible as private inspection. The public factory inspectors of Europe, although of high grade, do not rank with the inspectors of the English private insurance companies and of the German trade mutual associations, who are undoubtedly the greatest factors for successful accident reduction in the world.

The Ohio Board of Awards, however, claims that it can differentiate rates properly without inspection, solely upon experience—that is, upon the past records of establishments in the way of accidents. That is absurd. No one would insure a boiler, an elevator or a flywheel without inspection and on its past record alone. And that practice holds out no inducement to improvements. The Ohio Board has been driven to make this absurd claim in order to gloze the fact that it has *no force competent* to inspect.

(2) Between the tendency on the one hand to favor employers with low initial rates and on the other hand to favor workmen with liberal awards, all politically managed insurance is peculiarly apt to result in deficiencies and to impose the burden of making good such deficiencies upon taxpayers generally. That is a miscarriage of the compensation law and contrary to its purpose and intent. It amounts in effect to subsidizing the hazards of industry. Such a miscarriage has already occurred in Norway. Of course, where the state has expressly assumed to pay any definite part of the cost, this criticism does not apply; but the objection remains that this gives to state insurance a handicap

in comparison with private insurance. There is no necessity for imposing such a burden on the public, since a more efficient and no more expensive service can be furnished under a system of well managed, state-regulated private insurance.

(3) State insurance most completely breaks the direct relation between employers and their injured workmen, and leads to the expensive consequence, that where the efficiency of a workman is partially reduced by injury, instead of being retained by his employer at a lighter task and at lower wages and then compensated for the reduction in wages only, he is more generally cast out altogether and becomes an idle pensioner on the insurance fund. That private insurance under a direct liability law generally avoids this abuse, is demonstrated by English experience.

(4) Under state-managed insurance generally the allowance of claims and the adjustment of awards are left absolutely to the discretion of a few political officials. Employers have nothing to say about the management of the fund or the allowance of claims against it, although they have to pay the bills. Experience everywhere indicates that this practice results in extreme laxity in guarding the fund against malingering, fraudulent impositions and exaggerations, and in a tendency on the part of the officials to misuse their powers to distribute political favors or charitable relief at employers' expense. Awards of compensation operate indirectly to deprive employers of their property, and therefore they should have an opportunity to be heard and to present the facts before awards are made or increased. Bearing in mind that malingering is the bane of the compensation law, it is obvious that unless a careful system of checks upon impositions is maintained there will be as great a proportion of parasites living in idleness off the compensation law as there are unworthy beneficiaries under our National Pension Laws. And unless employers have some voice in the administration of the funds and in the adjudication of awards there is practically no efficient check. It is noticeable that in the majority of the state-insurance countries, as well as in Washington and Ohio, there is almost no expenditure to scrutinize claims, to prevent impositions or to exercise surveillance over pensioners. And certainly it is not sound public policy that the same officials who fix rates and collect the funds should also determine the awards against the funds. These two functions are incompatible. To confide them both to one set of officials is practically to invite perversions of the law. Should these officials, for example, fix rates too low to meet their liabilities it would be only too easy for them to hide that mistake by scaling

down awards unduly so as to make ends meet, regardless of the exact rights of the injured claimants.

The following objections apply to state-managed insurance only where it has a monopoly, or only to particular forms of it.

(5) The vital objection to monopolistic state-managed insurance is to the monopoly itself. Why establish a monopoly? Monopoly leads to laxity, comparative inefficiency and to indifference to minority dissatisfaction and to incidental abuses, injustices and defects, which would be cured under the stress of competition. Where one arbitrary form of insurance is prescribed for all there will always be a large class who will be dissatisfied from lack of choice; and certainly the better class of employers—those with relatively low risks—will be dissatisfied with any form of monopolistic insurance, for it will result, generally, in their being treated indifferently on a par with their more negligent competitors. The state can strictly regulate and supervise competition by private insurance and can keep it within proper limits; and it can make private agencies as generous, prompt and certain in furnishing compensation as the state itself intends to be in its own insurance service. What, then, is to be gained by giving a branch of government a monopoly of the field and by refusing to permit employers to accomplish the same results by other means than participating in the government scheme? Because state officials realize that they cannot meet the rivalry of private companies, that their administration will be handicapped by extravagance and waste which private business concerns do not tolerate, and that they would suffer by the comparison with corporate efficiency if there should be competition in the same service, is the principal cause of but is not a sound reason for the advocacy of a governmental monopoly. That the prevailing opinion in Europe is opposed to a political monopoly of insurance is demonstrated by the fact that almost all the compulsory compensation insurance laws, adopted since the Norwegian law, have either resorted to compulsory self-managed *mutual* insurance or have given employers a choice between different methods of securing or insuring the liability. Monopolistic state insurance is certainly regarded as an evil to be avoided.

Moreover, there is no justification for subjecting *all* concerns, including those which are amply able to carry their own risks, to a tax to maintain the state monopoly. Even in Norway the railroads, which are the only concerns there large enough to carry their own risks, are exempted. And yet the very foundation of the American projects for state insurance is the assurance to be derived from the liability of large concerns to pay the losses of irresponsible competitors.

(6) State-managed insurance where it is compulsory and has a monopoly not only gives to a few officials the power to tax the various classes of industry about as they choose, but it also places individual employers absolutely at the mercy of those officials as to which of several trade classes their respective establishments may be assigned to, and, consequently, as to which of several widely different rates they may be taxed. This is a subject of frequent disputes and bitterness. The power is most liable to abuse; and in unscrupulous hands would be used to rule or ruin industrial employers. In this form state-managed insurance is a tool with which the unscrupulous politician may menace or plunder industry. It is desired by socialists as a step towards complete state management of industries.

(7) Where under state-managed insurance a single fund is not maintained, but the employers in each trade class are subject to assessments to maintain a separate fund to compensate workmen injured in that trade, the danger of insufficient risk distribution is encountered. In few, if any, States of this country would there be a sufficient distribution of risks in any one trade class, under this practice. Nevertheless it has been adopted in the Washington law; and the result is a menace to industry.

The explanation of the last proposition is as follows: A direct liability compensation law makes the employer in effect an insurer of his workmen in limited amounts. That liability subjects the employer to serious peril of a ruinous loss, without fault, unless at a reasonable rate he can re-insure and procure indemnity. Now what the Washington law does is to make each employer an insurer not only of his own workmen but also of all the workmen of all his competitors in the same trade, thus multiplying his risk, and it then taxes him a heavy premium, as if for insurance, but does not indemnify him. Take for illustration the case of the Du Pont Powder Company, which is in the same class with some five other much smaller concerns, and subject to a tax of 10% on its payroll, or about $14,400, as against about $2,400 from all its competitors together. One of those other concerns blew up and killed eight persons. The amount of the liability of the powder mill class fund to their dependents might have been $32,000. The amount of premiums due to the fund was about $16,800. Under such circumstances the Du Pont Company would have been liable to a further assessment for about 80% of the deficiency of $15,200, for one single accident in a competing concern. So the Du Pont Company for its $14,400 assessment did not procure insurance, but still remained liable for about 80% of any deficiency in compensation that might become due by the fund to all workmen in powder mills in the State of Washington.

To procure indemnity such as an English employer gets under a direct liability compensation law, the Du Pont Company would have to go out in the open market and buy real insurance in addition, under the same conditions as—but for a much larger risk and therefore at a much higher rate than—before the adoption of this fancy scheme. It is obvious that under such conditions insurance under the Washington plan is most unjust and burdensome to responsible and well-managed concerns.*

In conclusion there should be considered briefly the relative advantages of the direct liability law—with or without the addition of provisions for compulsory insurance. (Note that this is the type of the majority of the compensation laws). The distinctive feature of such laws is that there is littl or no bureaucracy and no monopoly of insurance; but each employer is fre to choose such insurance as he may prefer, and is not by law placed at th mercy of a political machine. He may bargain for rates among competin insurers, may change his insurance where it is unsatisfactory, can secure a reduce rate in return for improvements, may join a mutual association if condition suit him, by agreement with his workmen may establish a joint benefit schem of insurance, or—where his risks are sufficiently distributed—may carry hi own insurance. Under this system, in Great Britain, for example, there ar no political abuses, comparatively direct mutual relations between employer and their injured workmen are maintained, there has developed a system o rate differentiation based upon expert inspection that has been a powerful facto in reducing the hazards of industry, and insurance rates are relatively as lo as anywhere else, in spite of the fact that in some of the state-insurance countrie the state pays the whole or a large share of the expenses of administering th insurance.

It is obvious that a law of the latter type would be the simplest and lea experimental first step in the direction of wider social insurance; that it woul remedy the injustices of our liability law, would least interfere with the accustome liberties of our people and would be a far more prudent experiment than an system of state insurance.

---

*In the foregoing discussion no reference is made to relief funds maintained by fix rates of contributions from employers, employees and the state, such, for example, as provided for in the law of New South Wales. Such funds do not insure fixed rates compensation, the amount of relief being limited by the means of the fund. While n without benefit in the way of poor relief, such funds are not satisfactory substitutes f the compensation law. (This criticism applies to the Act recently passed by the legislatu of West Virginia.)